

JAN 7 1984

No. 83-889

ALEXANDER L. STEVENS
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

BUNNAN TONG & COMPANY, LTD., *Defendant-Petitioner*,

v.

F. W. WOOLWORTH COMPANY and
TRAVELERS INSURANCE COMPANY, *Defendants-Respondents*,
and

TELINA NELSON, *a minor*, by Cindra R. Carson,
Guardian ad Litem, GERALD NELSON, and
SHERRY NELSON, *Plaintiffs-Respondents*.

*On Petition For a Writ of Certiorari To The
United States Court of Appeals
For The Seventh Circuit*

Supplemental Brief
of Petitioner

THOMAS A. LOCKYEAR
Counsel of Record
JOHN M. MOORE
BARRETT J. CORNEILLE
BELL, METZNER & GIERHART, S.C.
222 West Washington Avenue
P.O. Box 1807
Madison, Wisconsin 53701
(608) 257-3764
Counsel for Petitioner

January 4, 1984

CITATIONS

CASES:

- C & H Transportation Co., Inc. v. Jensen & Reynolds*
Construction Co., 719 F.2d 1267 (5th Cir. 1983) 1-3
- Hall v. Helicopteros Nacionales*, 638 S.W. 2d 870
(Tex. 1982), cert. granted _____ U.S. _____, 103 S.
Ct. 1270, 75 L. Ed. 2d 493 (1983) 2, 3
- Hydrokinetics, Inc. v. Alaska Mechanical, Inc.*,
700 F.2d 1026 (5th Cir. 1983), petition for cert. filed
52 U.S.L.W. 3028 (U.S. Aug. 2, 1983) (No. 83-122) 2
- World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980) 2-4

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

BUNNAN TONG & COMPANY, LTD., *Defendant-Petitioner*,

v.

F. W. WOOLWORTH COMPANY and
TRAVELERS INSURANCE COMPANY, *Defendants-Respondents*,
and

TELINA NELSON, *a minor*, by Cindra R. Carson,
Guardian ad Litem, GERALD NELSON, and
SHERRY NELSON, *Plaintiffs-Respondents*.

*On Petition For a Writ of Certiorari To The
United States Court of Appeals
For The Seventh Circuit*

Supplemental Brief
of Petitioner

On November 15, 1983, Bunnan Tong & Company, Ltd.¹ filed its petition for writ of certiorari to review the judgment and opinion of the Seventh Circuit Court of Appeals in the above matter. Since that date, the United States Court of Appeals for the Fifth Circuit has decided *C & H*

¹ Bunnan Tong & Company, Ltd. has no parent company, no subsidiaries other than wholly-owned subsidiaries and no affiliates.

Transportation Co., Inc. v. Jensen & Reynolds Construction Co., reported at 719 F. 2d 1267 (5th Cir. 1983). In its November 21, 1983 opinion, the Fifth Circuit has reaffirmed the position it has taken since this Court's decision in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); that *World-Wide's* analysis of the exercise of personal jurisdiction consistent with the due process clause of the Fourteenth Amendment requires some purposeful limited contacts with the forum in question by the party over whom jurisdiction is sought.

In *C & H Transportation Co.*, the Fifth Circuit Court of Appeals found that Jensen & Reynolds, a California corporation not licensed to do business in Texas and maintaining no offices or business relations in Texas, had insufficient Texas contacts for personal jurisdiction consistent with the limitations of the due process clause of the Fourteenth Amendment, despite Jensen's direct negotiations with a Texas based motor carrier, including a telephone conference with the carrier's Dallas, Texas main office, for transportation of equipment from Louisiana to the state of Washington. The court found Jensen's contacts with C & H Transportation and the state of Texas to be an isolated incident, and, as such: "...insufficient to be characterized as purposeful activity invoking the benefits and protections of the forum state's laws." 719 F. 2d at 1270, quoting from *Hydrokinetics, Inc. v. Alaska Mechanical, Inc.*, 700 F. 2d 1026, 1029 (5th Cir. 1983), petition for cert. filed 52 U.S.L.W. 3028 (U.S. Aug. 2, 1983) (No. 83-122). Indeed, as the court points out, extensive communications and at least one visit to the state of Texas in the development of a contract were found by the Fifth Circuit to be insufficient minimum contacts for the exercise of personal jurisdiction in *Hydrokinetics*.

In making its decision, the Fifth Circuit Court of Appeals points out that the Texas Supreme Court's recent decision in *Hall v. Helicopteros Nacionales*, 638 S.W. 2d 870 (Tex. 1982), cert. granted ____ U.S. ____, 103 S. Ct. 1270, 75 L. Ed. 2d 493 (1983), far from eliminating the requirement for the exercise of minimum purposeful contacts with the forum state for the constitutional exercise of personal jurisdiction, instead

recognizes sufficient purposeful contacts as its threshold standard.²

The Fifth Circuit's opinion in *C & H Transportation Co.* clearly reaffirms that court's post-*World-Wide Volkswagen* interpretation of the requirements for exercise of personal jurisdiction consistent with the due process clause of the Fourteenth Amendment in direct conflict with the opinion of the Seventh Circuit Court of Appeals below. The Fifth Circuit, together with the Third and Ninth Circuit Courts of Appeals, have, since this Court's decision in *World-Wide Volkswagen*, clearly recognized the limitation of minimum contacts on the exercise of personal jurisdiction consistent with the due process clause of the Fourteenth Amendment.

As these courts have understood *World-Wide Volkswagen*, the bare stream of commerce analysis applied by the Seventh Circuit Court of Appeals in this case is a constitutionally insufficient test; in addition to presence in a stream of commerce, these courts understand the test explained by this Court in *World-Wide Volkswagen* to require that a party must have sufficient purposeful minimum contacts with the forum jurisdiction for the exercise of personal jurisdiction to comport with the requirements of the due process clause of the Fourteenth Amendment.

² Respondent F. W. Woolworth Company and Travelers Insurance Company's citation of this case does not include this Court's March 7, 1983 grant of a writ of certiorari to the Texas Supreme Court. Respondent's citation of *Hall* is from the dissent in this case, and is for a proposition not encompassed by the question presented on appeal [51 U.S.L.W. 3663 (U.S. March 1, 1983) (No. 82-1127)]. Petitioner Bunnan Tong believes that this Court's grant of certiorari calls into question the type, number and quality of contacts that a party must have within a forum before that forum's courts may exercise jurisdiction. In contrast to the defendant in *Hall*, petitioner Bunnan Tong has no direct contacts, either related or unrelated to the cause of action in this case.

Clearly, there is a substantial conflict between the interpretation given to *World-Wide Volkswagen* by the Seventh Circuit Court of Appeals in its decision below and the understanding of that case by the Courts of Appeals for the Third, Fifth and Ninth Circuits. Petitioner Bunnan Tong & Company, Ltd. respectfully requests that this Court grant its petition for writ of certiorari to resolve this conflict.

Respectfully submitted,

THOMAS A. LOCKYEAR
Counsel of Record

JOHN M. MOORE
BARRETT J. CORNEILLE
BELL, METZNER & GIERHART, S.C.
222 West Washington Avenue
P.O. Box 1807
Madison, Wisconsin 53701
Counsel for Petitioner

January 4, 1984